

Letter of Findings: 04-20130585P
Negligence Penalty
For the Period 8/1/2013 through 8/31/2013

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ISSUE

I. Tax Administration – Negligence Penalty.

Authority: [IC 6-8.1-10-2.1](#); [45 IAC 15-11-2](#).

Taxpayer protests the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is an Indiana business that files monthly sales and use tax returns with the Indiana Department of Revenue ("Department"). Taxpayer did not correctly file its sales and use tax return ("ST-103") for the August 2013 period resulting in a late payment of sales tax. The Department assessed Taxpayer a ten percent negligence/late payment penalty for that period. Taxpayer protested the assessment of penalty. A hearing was held on Taxpayer's protest and this Letter of Findings ensues. Further facts will be supplied as required.

I. Tax Administration – Negligence Penalty.

DISCUSSION

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. [IC 6-8.1-10-2.1](#). The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Indiana law requires Taxpayer to demonstrate that it had reasonable cause for not collecting and remitting the sales tax due. In order to establish reasonable cause, Taxpayer must demonstrate that it exercised "ordinary business care and prudence" in conducting the duties from which the additional tax and penalty arose. [45 IAC 15-11-2\(c\)](#).

On September 11, 2013, Taxpayer filed its August 2013 ST-103 return electronically. Taxpayer failed to properly complete the related electronic payment process. Taxpayer's secretary had filed one prior electronic return along with its payment successfully and thought she had applied the same method in this instance. Immediately after filing the August 2013 return Taxpayer's secretary was away from the office for a week. Upon her return she discovered that the Taxpayer's bank account had not been debited for the amount of tax due, so she followed up with the Department and subsequently Taxpayer made full payment of the sales tax due, including the ten-percent penalty that had been imposed in the interim.

Given Taxpayer's otherwise good filing history, Taxpayer has affirmatively established that in this instance it was not willfully neglectful in its failure to properly file its August 2013 ST-103. The Department will abate the ten-percent penalty at issue. Taxpayer is on notice that similar mistakes in the future will constitute negligence.

FINDING

Taxpayer's protest is sustained.

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